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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/813,398	03/20/2001	Bruce D. Weintraub	UOFMD.003C1	2940

7590

04/01/2004

Steven B. Kelber
PIPER, MARBURY RUDNICK & WOLFE, L.L.P.
1200 Nineteenth Street N.W.
Washington, DC 20036-2412

EXAMINER

SPECTOR, LORRAINE

ART UNIT

PAPER NUMBER

1647

DATE MAILED: 04/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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20040330

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

The reply filed on 1/20/2004 is not fully responsive to the prior Office Action because: Prosecution in this case was not closed. Accordingly, applicants are not eligible to file a Request for Continued Examination, see 37 C.F.R. §1.114(a). It remains that applicants have not filed a responsive amendment in response to the Office Action dated 12/12/2002.

An action on the merits in this case was mailed 12/12/2002.

Applicant's response of 6/12/2003 was indicated as being non-responsive in the communication mailed 7/1/2003.

Applicant's response of 7/31/2003 was indicated as being non-responsive in the communication mailed 10/17/2003.

Applicant's response of 11/5/2003 was indicated as being non responsive in a communication mailed 1/5/2004.

Applicant's request for continued examination of 1/20/2004 is not proper, and will not be entered.

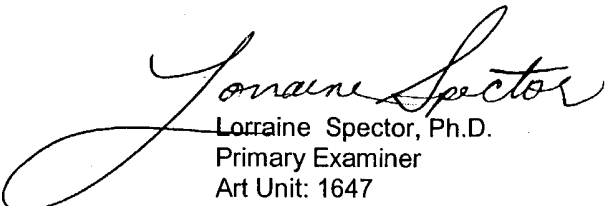
It remains, as set forth in the communication of 7/1/2003, that there is no allowable generic claim, and there are no claims pending that are drawn to the elected invention, hCG comprising a substitution of V79B, according to conventional numbering for hCG. The elected invention remains rejected under 35 USC 102(b).

Applicant must respond in full to the office action mailed 12/12/2002. Any incomplete response will be considered to be non-responsive.

No further argument of the restriction requirement will be considered. Applicants are advised of their right to petition the restriction requirement as allowed by 37 C.F.R. §1.181.

Since the period for reply set forth in the prior Office action mailed 10/17/2003 has expired, this application will become abandoned unless applicant corrects the deficiency and obtains an extension of time under 37 CFR 1.136(a).

The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. In no case may an applicant reply outside the SIX (6) MONTH statutory period or obtain an extension for more than FIVE (5) MONTHS beyond the date for reply set forth in an Office action. A fully responsive reply must be timely filed to avoid abandonment of this application.


Lorraine Spector, Ph.D.
Primary Examiner
Art Unit: 1647



Commissioner for Patents
United States Patent and Trademark Office

Washington, D.C. 20231
www.uspto.gov

APPLICATION NUMBER

FILING DATE

FIRST NAMED APPLICANT

ATTY. DOCKET NO./TITLE

DATE MAILED:

NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION (RCE)

The request for continued examination (RCE) under 37 CFR 1.114 filed on 1/20/04 is improper for reason(s) indicated below:

- ☐ 1. Continued examination under 37 CFR 1.114 does not apply to an application for a design patent. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d).
- ☐ 2. Continued examination under 37 CFR 1.114 does not apply to an application that was filed before June 8, 1995. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d).
- ☒ 3. Continued examination under 37 CFR 1.114 does not apply to an application unless prosecution in the application is closed. If the RCE was accompanied by a reply to a non-final Office action, the reply will be entered and considered under 37 CFR 1.111. If the RCE was not accompanied by a reply, the time period set forth in the last Office action continues to run from the mailing date of that action.
- ☐ 4. The request was not filed before payment of the issue fee, and no petition under 37 CFR 1.313 was granted. If this application has not yet issued as a patent, applicant may wish to consider filing either a petition under 37 CFR 1.313 to withdraw this application from issue, or a continuing application under 37 CFR 1.53(b).
- ☐ 5. The request was not filed before abandonment of the application. The application was abandoned, or proceedings terminated on _____. Applicant may wish to consider filing a petition under 37 CFR 1.137 to revive this abandoned application.
- ☐ 6. The request was not accompanied by the fee set forth in 37 CFR 1.17(e) as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.
- ☐ 7. The request was not accompanied by a submission as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.

Note: If a request for a continued prosecution application (CPA) under 37 CFR 1.53(d) has been filed in the utility or plant application (including a previously filed CPA) that was filed on or after May 29, 2000, **the request for a CPA has been treated as a RCE** because the CPA practice no longer applies to such application. The constructive RCE, however, is improper for reason(s) indicated above.

A copy of this notice MUST be returned with any reply.

Direct the reply and any questions about this notice to:

Kevin J. Hannell, Examining Group 1600

571-272-0561
(703) 30

FORM PTO-2051 (Rev. 3/2001)